

ILLINOIS ADMINISTRATIVE CODE

TITLE 14. COMMERCE
SUBTITLE B. CONSUMER PROTECTION
CHAPTER II. ATTORNEY GENERAL
PART 470. RETAIL ADVERTISING

14 Ill. Adm. Code 470 (2000)

Title 14 Part 470 -- Authority & General Source

AUTHORITY: Implementing Sections 2 and 3 and authorized by Section 4 of the Consumer Fraud and Deceptive Business Practices Act (Ill. Rev. Stat. 1987, ch. 121 1/2, pars. 262, 263, 264).

GENERAL SOURCE: Adopted at 13 Ill. Reg. 11441, effective June 29, 1989.

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SUBPART A. GENERAL PROVISIONS

14 Ill. Adm. Code 470.110 (2000)

@ 470.110 Preamble.

Price comparison advertising is a form of advertising used in the sale of products whereby current prices are compared with the seller's former or future prices, the prices of other sellers, or other stated values, to demonstrate

price reductions or cost savings. It is the intent of this Part to ensure that the comparative price used in any price comparison advertisement provides accurate information and meaningful guidance to the consumer. The use of misleading price comparisons is injurious to both the consuming public and competitors and is an unfair or deceptive act and an unfair method of competition under Section 2 of the Consumer Fraud and Deceptive Business Practices Act (Ill. Rev. Stat. 1987, ch. 121 1/2, par. 262).

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14 Ill. Adm. Code 470.120 (2000)

@ 470.120 Definitions.

Except as hereinafter stated and unless a different meaning of a term is clear from its context, the definitions of terms used in this Part shall be the same as those used in the Consumer Fraud and Deceptive Business Practices Act (Ill. Rev. Stat. 1987, ch. 121 1/2, par. 261 et seq.).

"Advertisement" (including the terms "advertise" and "advertising"), as defined in Section 1 of the Act, means any oral, written, graphic, or pictorial statement made by a seller in any manner in the course of the solicitation of business. Advertisement includes, without limitation, any statement or representation made in a newspaper, magazine, or other publication or on radio or television or contained in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, or letter, or printed on or contained in any tag or label which is attached to or accompanies any product offered for sale.

"Clear and conspicuous" (including the terms "clearly and conspicuously") means that the statement, representation or term being disclosed is in such size, color contrast, or audibility and is so placed and presented as to be: in close proximity to the information it modifies, readily noticeable, and

reasonably understandable by the person or persons to whom it is being disclosed.

"Comparative price" means the price or value of a product to which a seller is comparing its current price in any advertisement.

"List price or manufacturer's suggested retail price" means the prices issued to retailers by national brand manufacturers as a suggested retail price for the manufacturer's product.

"Person" means any association, corporation, individual, institution, natural person, organization, partnership, trust or any other legal entity.

"Price comparison" means the direct or indirect comparison in any advertisement (whether or not expressed wholly or in part in dollars, cents, fractions, or percentages) of a seller's current price for a product with any other price or statement of value, whether or not such price is actually stated in the advertisement. Price comparison includes any price reduction claim or savings claim which a seller makes with respect to the seller's current price for any product.

"Product" means any and all goods, whether tangible or intangible, real, personal or mixed and any and all services or franchise or distribution system of any nature.

"Seller" means any person who offers any product for retail sale, rental or lease at any location and disseminates advertisements for that product in Illinois. Seller may include any officer, agent, employee, salesperson, or representative of a seller and any advertising agency employed by a seller.

"Trade area" means the geographic area where the seller's outlets are located and where the seller's advertisements are disseminated.

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14 Ill. Adm. Code 470.210 (2000)

@ 470.210 Identifying Basis of Price Comparison.

It is an unfair or deceptive act for a seller to make a price comparison or claim a savings as to any product it offers (for example: "\$ 29.99--Save \$ 10.00"--or--"20% Off all men's shirts") unless the seller clearly and conspicuously describes the basis for the price comparison or the savings claimed; provided, however, a seller may compare a higher and a lower price without describing the basis for the price comparison or the savings claimed if the higher price is the seller's own former (regular) price as determined in accordance with Section 470.220 of this Part. Terms such as "formerly," "regularly," "originally," or words of similar meaning may be used by the seller to identify the higher price as its own former (regular) price.

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14 Ill. Adm. Code 470.220 (2000)

@ 470.220 Comparison to Seller's Own Former (Regular) Prices.

It is an unfair or deceptive act for a seller to compare current price with its former (regular) price for any product or service, (for example: "\$ 99, Now \$ 69--Save \$ 30"; "Regularly \$ 99, Now \$ 69"; "Originally \$ 99, Now \$ 69"; "Save \$ 30, Now \$ 69") unless one of the following criteria are met:

a) the former (regular) price is equal to or below the price(s) at which the seller made a substantial number of sales of such products in the recent regular course of its business; or

b) the former (regular) price is equal to or below the price(s) at which the

seller offered the product for a reasonably substantial period of time in the recent regular course of its business, openly and actively and in good faith, with an intent to sell the product at that price(s).

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14 Ill. Adm. Code 470.230 (2000)

@ 470.230 Comparison to Future Prices.

It is an unfair or deceptive practice for a seller to make an introductory offer or to compare its current price for a product with the price at which the product will be offered in the future (for example: "Introductory Sale, Now \$ 69, will be \$ 90"), unless:

a) the future price takes effect within a reasonable time after the introductory offer or price comparison is published; and

b) the product's future price is, subsequent to the end of an introductory sale, properly established as the seller's former (regular) price in accordance with Section 470.220 of this Part.

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14 Ill. Adm. Code 470.240 (2000)

@ 470.240 Range of Savings or Price Comparison Claims.

It is an unfair or deceptive act to state or imply that any products are being offered for sale at a range of prices or at a range of percentage or fractional discounts (for example: "Save from 10% to 50% Off") unless the highest price or lowest discount in the range is clearly and conspicuously disclosed in the advertisement and a reasonable number of these items in the advertisement are offered with at least the largest advertised discount. If at least 5% of the items in the advertisement are offered with at least the largest advertised discount it shall create a rebuttable presumption that a reasonable number were offered with at least the largest advertised discount.

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14 Ill. Adm. Code 470.250 (2000)

@ 470.250 Use of "List Price" or Similar Comparison.

It is an unfair or deceptive act to claim an actual savings from a "list price", "manufacturer's suggested retail price", or term of similar meaning unless the "list price" is the price at which the product is offered by a reasonable number of sellers in the seller's trade area (for example: "List Price \$ 99, our price \$ 69, save \$ 30.00). However, a seller may reference a list price in relation to its regular price as long as no savings are claimed and the seller discloses that the list price may not necessarily be the price at which the product is sold in the trade area.

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14 Ill. Adm. Code 470.260 (2000)

@ 470.260 Comparison to Other Sellers' Price for Identical Product.

It is an unfair or deceptive act for a seller to compare his price with a price currently being offered by another seller for an identical product (for example: "Sold elsewhere for \$ 99, our price \$ 69") unless the stated higher comparative price is at or below the price at which the identical product is currently being offered in the seller's trade area by:

- a) a reasonable number of other sellers in the same trade area; or
- b) another seller(s) is specifically identified in the advertisement.

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14 Ill. Adm. Code 470.270 (2000)

@ 470.270 Comparison to Sellers' Own or Other Sellers' Price for Comparable Product.

[No text in original]

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14 Ill. Adm. Code 470.280 (2000)

@ 470.280 Use of Terms "Two for Price of One", "Buy One, Get One Free".

It is an unfair or deceptive act for a seller to state or imply that products are being offered at the usual price of a smaller number of the same or a different product (for example, "Four pillows for the price of three" or "buy one pair of shoes, second pair free") unless:

- a) The seller clearly and conspicuously discloses all material conditions which are imposed on the sale; and
- b) The price indicated by the seller as its usual and customary price for the smaller number of products is the sellers' own former (regular) price for such products as determined in accordance with Section 470.220 of this Part.

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14 Ill. Adm. Code 470.290 (2000)

@ 470.290 Use of "Sale" Terminology.

Where a direct price comparison is not utilized as provided elsewhere in this Part, it is an unfair or deceptive act for a seller to use such terminology as "sale", "sale prices" "Now only \$ " or other words and phrases that imply a price savings unless the price of the product is reduced by a reasonable amount from the product's former (regular) price as determined in accordance with Section 470.220 of this Part. If the seller reduces the price by 5% or more a rebuttable presumption shall exist that the price reduction was of a reasonable amount. However, the term "sale" can be used in an advertisement where not all items are offered at a reduction to regular price if such items are clearly identified.

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SUBPART C. AVAILABILITY OF ADVERTISED MERCHANDISE

14 Ill. Adm. Code 470.310 (2000)

@ 470.310 Customer Demand.

It is an unfair or deceptive act for a seller to advertise any product for sale when the seller does not have that product in stock in sufficient quantities to meet reasonably anticipated customer demand during the effective period of the advertisement, except where:

- a) The seller clearly and conspicuously discloses in its advertisement that quantities are limited or that restrictions apply to the advertised offer; or
- b) Conditions beyond the seller's control (i.e. bankruptcy of source, labor stoppage, Act of God, etc.) interrupted the supply of the product; or
- c) The seller has, in good faith, ordered the product in adequate time for delivery and in sufficient quantity to satisfy reasonably anticipated consumer demand, and the seller has maintained sufficient records to substantiate such orders; or
- d) The seller tenders a raincheck entitling prospective purchasers to buy the

advertised product at the advertised price and redeems the raincheck within a reasonable time after the issuance thereof; or

e) The seller offers prospective customers a product of an equal or greater value at the same price which is acceptable to a reasonable consumer or is of a lesser value at the same dollar or percentage savings.

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